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**MAILED**

DEC 14 2010

**OFFICE OF PETITIONS**

In re Application of : DECISION ON REQUEST  
Schultz et al. : FOR RECONSIDERATION OF  
Application No. 10/022138 : PATENT TERM ADJUSTMENT  
Filing or 371(c) Date: 12/13/2001 :  
Attorney Docket Number: :  
ORT-1548 :  
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b) WITHIN THREE MONTHS OF RECEIPT OF THE NOTICE OF ALLOWANCE," filed November 2, 2010. Applicants submit that the correct patent term adjustment to date is 253 days, not 348 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction based upon an assertion that the Office erred in calculating an adjustment of 95 days.

The Application for Patent Term Adjustment under 37 CFR 1.705(b), is **GRANTED**.

#### **BACKGROUND**

The application was filed on December 13, 2001. On August 2, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 348 days.

On November 2, 2010, applicants timely submitted the present request for reconsideration of patent term adjustment<sup>1</sup>. Applicants assert that the Office erred in calculating an adjustment of 95 days pursuant to 37 CFR 1.702(a)(2), in connection with the mailing of a non-final Office action on May 4, 2006, four (4) months and 95 days after the filing of the non-compliant Appeal Brief. Applicant notes that the non-final Office action was timely filed within four (4) months of the filing of a compliant Appeal Brief, filed January 30, 2006.

#### **OPINION**

Applicants' arguments have been carefully considered. A review of Office records confirms that applicants filed an appeal Brief on September 29, 2005. The Appeal Brief was non-compliant.

<sup>1</sup> Office records show that the Issue Fee payment was received in the Office on November 2, 2010.

Applicants were so notified in Notice of Non-Compliant Appeal Brief, mailed January 3, 2006. Applicants thereafter filed a compliant Appeal Brief on January 30, 2006. In response, the Office mailed a non-final Office action on May 4, 2006, within four (4) months of the filing of the compliant Appeal Brief. As such, the adjustment of 95 days pursuant to 37 CFR 1.702(a)(2) is in error and has been removed.

In view thereof, the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is two hundred fifty-three (253) days (558 days Office adjustments – 305 days Applicant delay), subject to any terminal disclaimer.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods at (571) 272-3232.



Anthony Knight  
Director  
Office of Petitions

**Patent  
Term  
Adjustments**

[PTA/PTE Information](#) [Patent Term Adjustment](#) [Patent Term Extension](#)

Application Number: **10022138** [Search](#) [Explanation of PTA Calculation](#) [Explanation of PTE Calculation](#)

**PTA Calculations for Application: 10022138**

Action Filing Date	Issue Date	Overlapping Days Between (A and B) or (A and C)	Non-Overlapping USPTO Delays
12/12/2010		A Delays 149	PTO Manual Adjustment -93
06/03/2010		B Delays 0	Applicant Delay (APPL) 305
07/19/2010		C Delays 504	Total PTA (days) 253

• Sorted Column

**File Contents History**

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
135	12/12/2010		PO2B	Adjustment of PTA Calculation by PTO	0	0	
126	06/03/2010		MN/A	Mail Notice of Allowance	0	0	
125	07/19/2010		IREV	Issue Revision Completed	0	0	
124	07/19/2010		N/A	Notice of Allowance Data Verification Completed	0	0	
123	07/19/2010		DOCK	Case Docketed to Examiner in GAU	0	0	
122	07/19/2010		DOCR	Allowed Case Returned to the Examiner for Clerical Processing	0	0	
121	07/19/2010		DVER	Document Verified	0	0	
120	07/19/2010		CNTA	Notice of Allowability	0	0	
115	05/03/2010		ELC_RVM	Electronic Review	0	0	
114	05/03/2010		EML_RTF	Email Notification	0	0	
113	05/03/2010	12/16/2008	NAPDR	Mail SPAI Decision on Appeal - Reversed	253	0	
112	04/29/2010		APDR	SPAI Decision - Examiner Reversed	0	0	
105	09/16/2009		WCRD	Withdrawal of return of appeal	0	0	
111	09/07/2009		AP_DM_N	Docketing Notice Mailed to Applicant	0	0	
110	09/08/2009		APAS	Assignment of Appeal Number	0	0	
109	08/31/2009		HBRK	Mail Reply Brief Filed by Examiner	0	0	
108	08/26/2009		SEME	Reply Brief Filed by Examiner	0	0	
107	08/26/2009		SEME	Reply Forwarded to Examiner	0	0	
106	08/24/2009		APRS	Reply Brief Filed	0	0	
95	08/14/2009		KFC37	Mail Miscellaneous Communication to Applicant	0	0	
94	08/13/2009		KH32	Miscellaneous Communication to Applicant - No Action Count	0	0	
93	07/27/2009		TCRD	Return of Undelocked appeal to the TC	0	0	
92	07/27/2009		JFCC	Exam. Ans. Review Complete	0	0	
90	06/22/2009		APEA	Examiner's Answer to Appeal Brief	0	0	
86	04/06/2009		APBR	Appeal Brief Review Complete	0	0	
85	04/06/2009		FWDX	Date Forwarded to Examiner	0	0	
84	03/16/2009		APB	Appeal Brief Filed	0	0	
83	03/16/2009		XT/G	Request for Extension of Time - Granted	0	0	
82	12/16/2008		FEES	Fees Payment Recorded (fees filed separately, e.g. not with original papers, etc.)	0	0	
81	12/16/2008	11/21/2008	N/AP	Notice of Appeal Filed	25	79	
80	12/16/2008		XT/G	Request for Extension of Time - Granted	0	0	
79	09/21/2008		MCTFR	Mail Final Rejection (PTOL - 326)	0	0	
78	09/18/2008		CTFR	Final Rejection	0	0	
75	06/11/2008		FWDX	Date Forwarded to Examiner	0	0	
74	04/23/2008		APB	Response after Non-Final Action	0	0	
73	03/04/2008		TDSC	Information Disclosure Statement (IDS) considered	0	0	
72	03/04/2008		HD44	Information Disclosure Statement (IDS) Filed	0	0	
71	01/25/2008		WIDS	Information Disclosure Statement (IDS) Filed	0	0	
70	01/25/2008		MCTMF	Mail Non-Final Rejection	0	0	
69	01/17/2008		CTFR	Non-Final Rejection	0	0	
68	01/06/2008		DOCK	Case Docketed to Examiner in GAU	0	0	
67	10/31/2007		FWDX	Date Forwarded to Examiner	0	0	
66	10/31/2007		FWDX	Date Forwarded to Examiner	0	0	
64	10/31/2007		ADN9	Disposition for a RCE / CPA / R129	0	0	
67	10/16/2007		AHSB	Amendment Submitted/Entered with Filing of CPA/RCE	0	0	
63	10/16/2007		XT/G	Request for Extension of Time - Granted	0	0	
62	10/16/2007		BRCE	Workflow - Request for RCE - Begin	0	0	
61	07/16/2007		N/AP	Notice of Appeal Filed	0	0	
60	04/16/2007	04/05/2007	MCTFR	Mail Final Rejection (PTOL - 326)	33	57	
59	03/13/2007		CTFR	Final Rejection	0	0	
58	01/14/2007		FWDX	Date Forwarded to Examiner	0	0	
57	01/05/2006	11/02/2006	APB	Response after Non-Final Action	33	54	
56	11/07/2006		KDRA	Mail Notice of Informal or Non-Responsive Amendment	0	0	
55	11/07/2006		FWDX	Date Forwarded to Examiner	0	0	
54	11/03/2006		AJ	Informal or Non-Responsive Amendment after Examiner Action	0	0	
53	11/03/2006	08/04/2006	A	Response after Non-Final Action	20	51	
52	11/02/2006		XT/G	Request for Extension of Time - Granted	0	0	
51	06/13/2006		TSSCOM	IPW TSS Processing by Tech Center Complete	0	0	
50	05/04/2006	01/29/2006	MCTMF	Mail Non-Final Rejection	33	45	
49	05/01/2006		CTNF	Non-Final Rejection	0	0	
48	03/08/2006		FWDX	Date Forwarded to Examiner	0	0	
47	01/03/2006		APB	Appeal Brief Filed	0	0	
46	10/12/2005		FWDX	Date Forwarded to Examiner	0	0	
45.1	09/29/2005		APB	Defective / Incomplete Appeal Brief Filed	0	0	
45	09/29/2005		APB	Appeal Brief Filed	0	0	
44	09/13/2005		MCTAV	Mail Advisory Action (PTOL - 303)	0	0	
43	09/12/2005		CTAV	Advisory Action (PTOL-303)	0	0	
42	08/01/2005		FWDX	Date Forwarded to Examiner	0	0	
41	07/31/2005		AP/A	Amendment/Argument after Notice of Appeal	0	0	
40	07/17/2005	06/15/2005	N/AP	Notice of Appeal Filed	32	35	
39	07/27/2005		XT/G	Request for Extension of Time - Granted	0	0	
38	03/15/2005		MCTFR	Mail Final Rejection (PTOL - 326)	0	0	
37	03/14/2005		CTFR	Final Rejection	0	0	
36	01/16/2005		FWDX	Date Forwarded to Examiner	0	0	
35	12/20/2004	10/01/2004	A	Response after Non-Final Action	89	30	
34	12/20/2004		XT/G	Request for Extension of Time - Granted	0	0	
33	10/22/2004		WADM	Workflow incoming amendment IPW	0	0	
32	10/22/2004		ADRA	Mail Notice of Informal or Non-Responsive Amendment	0	0	
31	10/21/2004		FWDX	Date Forwarded to Examiner	0	0	
30	10/01/2004	09/27/2004	AJ	Informal or Non-Responsive Amendment after Examiner Action	2	28	
29	10/01/2004		WADM	Workflow incoming amendment IPW	0	0	
28	06/17/2004		CTMF	Non-Final Rejection	0	0	
26	03/30/2004		FWDX	Date Forwarded to Examiner	0	0	
25	03/24/2004		APB	Appeal Brief Filed	0	0	
24	02/18/2004		MCTAV	Mail Advisory Action (PTOL - 303)	0	0	
23	02/17/2004		CTAV	Advisory Action (PTOL-303)	0	0	
22	02/05/2004		FWDX	Date Forwarded to Examiner	0	0	
21	02/05/2004		AP/A	Amendment/Argument after Notice of Appeal	0	0	
20	01/22/2004	01/21/2004	N/AP	Notice of Appeal Filed	1	19	
19	10/21/2003		MCTFR	Mail Final Rejection (PTOL - 326)	0	0	
18	10/20/2003		CTFB	Final Rejection	0	0	
17	09/07/2003		FWDX	Date Forwarded to Examiner	0	0	
16	07/30/2003	06/26/2003	A	Response after Non-Final Action	22	24	
15	07/30/2003		XT/G	Request for Extension of Time - Granted	0	0	
14	03/28/2003	02/13/2003	MCTMF	Mail Non-Final Rejection	0	0	
13	03/17/2003		CTMF	Non-Final Rejection	0	0	
12	01/29/2003		DOCK	Case Docketed to Examiner in GAU	0	0	
11.7	07/30/2002		HD44	Information Disclosure Statement (IDS) Filed	0	0	
11	07/30/2002		WIDS	Information Disclosure Statement (IDS) Filed	0	0	
9	06/04/2002		DOCK	Case Docketed to Examiner in GAU	0	0	
8	05/16/2002		GIPF	Application Dispatched from GIPF	0	0	
7	05/16/2002		COPR	Application is Now Complete	0	0	
10.7	05/13/2002		HD44	Information Disclosure Statement (IDS) Filed	0	0	
10.5	05/13/2002		GATIDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Gath of the Applic	0	0	
10	04/23/2002		INCO	Notice Mailed - Application Incomplete - Filing Date Assigned	0	0	
4	04/23/2002		PCAN	IPM Scan & PACB Auto Security Review	0	0	
3	04/13/2002		SCAN	IPM Scan & PACB Auto Security Review	0	0	
2	04/04/2002		SCAN	IPM Scan & PACB Auto Security Review	0	0	
1	12/13/2001		EXXX	Initial Exam Team no.	0	0	

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